Republic of the Philippines
Department of Finance
**Securities and Exchange Commission**
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

04 December 2007

SEC-OGC Opinion No. 07-23
Non-use of charter; continuous inoperation of a corporation

**PNOC EXPLORATION CORPORATION**
Bldg. I, Energy Center, Merritt Road, Fort Bonifacio
1634 Taguig City, Philippines

Attention : Mr. Rafael E. Del Pilar

Gentlemen:

This refers to your letter dated 05 September 2007 requesting opinion on whether a corporation which failed to commence business or commercial operation for years after its incorporation is deemed ipso facto dissolved.

Pertinent to your query is the provision of Section 22 of the Corporation Code which is quoted below:

> "SECTION 22. *Effects on non-use of corporate charter and continuous inoperation of a corporation.* If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved. However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation. (19a)
>
> This provision shall not apply if the failure to organize, commence the transaction of its businesses or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission."

It can be said that a corporation has organized and commenced business if the conditions subsequent to the registration have been complied with, to wit:

1. it should adopt and file its by-laws;

2. the board of directors should meet, elect a set of officers, adopt pertinent board resolutions and submit information sheet regarding its officers to this Commission;

3. it should register its corporate name or business name with the Department of Trade and Industry;

4. It should register itself with the Bureau of Internal Revenue and Social Security System and secure municipal or city license to operate its business; and

5. It should establish an office and start its business operations.[1]

A corporation is formally organized if it has adopted its by-laws, elected its directors and officers.[2] After the corporation has duly organized itself, a corporation must commence its business within two years, or at least must begin business transaction within said period.[3]

As the Supreme Court declared in the case of *Mentholatum Co. v. Mangaliman, et al.*[4], the term "transacting" or "doing" business implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. A single act, however, would be sufficient if it is intended to be the beginning of a series of acts in pursuance of the corporate business.[5] As long as the first act takes place within the two-year period, then the corporation will be safe from the effects of Section 22 of the Corporation Code.

In the event, however, that the corporation discontinues its operations for at least five (5) years, its certificate of incorporation may be suspended or revoked by this Commission.

From the recital of facts and the records at hand, there is no doubt that PMPC has formally organized itself when it adopted its by-laws and filed the same with this Commission. Moreover, after its registration, PMPC constituted its board of directors as shown in its General Information Sheet (GIS) for the year 2003. Not only that, PMPC also elected its officers as can be found in the said GIS. PMPC likewise commenced its business when it made presentations to prospective investors albeit it failed in successfully enticing these investors.

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1 Ruben Agpalo. Comments on the Corporation Code of the Philippines 101 (2001).
2 J. Campos, Jr. and M.C. Campos. The Corporation Code of the Philippines 382, Vol. 2.
3 Ibid, p. 383.
4 Citations omitted. G.R. No. 47701, 27 June 1941.
5 J. Campos and M.C. Campos, supra, p. 383.



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The crux of the matter, however, lies on whether the causes of the continuous inoperation of PMPC are beyond its control which would justify the non-revocation or non-suspension of its corporate charter. It is worthy to point out that Section 22 of the Corporation Code requires non-operation for *at least five (5) years.* In the case of PMPC, it has yet to reach the required number of years of inoperation considering that it was incorporated on 06 November 2002 and commenced prosecuting its business afterwards.

This Office is also of the opinion that there are causes that would justify the non-operation of PMPC for these past few years. To begin with, the prospective investors of PMPC opted to invest directly in the Service Contract 38 (SC 38), where the PMPC owned shares that it was supposed to offer to the public through an initial public offering (IPO).[1] Second, in March 2005, the government's Privatization Council approved the sale of PNOC Exploration Corporation's 10% participating interest in Service Contract 38 Malampaya project to LG International.[2] In April 2005, however, the Privatization Council withdrew its approval of the Farm-In Agreement with LG International and indicated that the privatization of the SC 38 asset would be pursued at some future time. As admitted in your letter, PMPC will again transact business or pursue its privatization exercise at the most propitious time. Clearly, there is an intent on the part of PMPC to pursue its business.

In any event, the above discussion does not preclude the PNOC EC or the PMPC itself to apply for the voluntary dissolution of the latter any time it decides to do so.

The foregoing opinion is based solely on the facts disclosed in the query and it shall not be used in the nature of a standing rule binding upon the Commission in other cases.[3]

Very truly yours,

**VERNETTE G. UMALI-PACO**
General Counsel

pnoc.pmpc.rev.odt

1 Audited Financial Statements for the year ending 31 December 2006.
2 Ibid.
3 SEC Memorandum Circular No. 15, series of 2003.



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